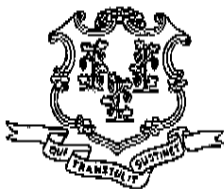


STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Joxel Garcia, M.D., M.B.A.
Commissioner



John G. Rowland
Governor

George Marcinko
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New Milford CT 06776

CMRRR#70993400001442526639
& First Class Mail

IN RE: George Marcinko, EMT-P - Petition No. 981223-072-007

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-180, the attached Proposed Memorandum of Decision issued November 22, 1999, by Hearing Officer Donna Brewer, is hereby adopted as the final decision of the Commissioner of the Department of Health in this matter. A copy of the Proposed Memorandum of Decision is attached hereto and incorporated herein.

February 9, 2001
Date



Joxel Garcia, M.D., M.B.A.
Commissioner



**PUBLIC HEALTH HEARING OFFICE
STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

In re: George Marcinko, E.M.T.P.

Petition No. 981223-072-007

PROPOSED MEMORANDUM OF DECISION

Procedural Background

On June 21, 1999, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") naming George Marcinko, E.M.T.P., as respondent ("respondent"). The Charges were brought pursuant to §§19a-10 and 19a-14 of the Connecticut General Statutes¹ and allege that respondent violated §§20-206nn(1) and/or 20-206nn(5), as described more particularly below. H.O. Exh. 1.

On July 15, 1999, the Commissioner of the Department appointed the undersigned to preside over the hearing in this matter, to rule on all motions, and to recommend findings of fact and conclusions of law. H.O. Exh. 2.

On August 31, 1999, the Public Health Hearing Office ("the PHHO") received respondent's Answer. H.O. Exh. 6.

The administrative hearing was held on September 23, 1999, in accordance with Connecticut General Statutes Chapter 54 and Regulations §§ 19a-9-1 *et seq.* Respondent appeared *pro se*; Staff Attorney Leslie Scoville represented the Department.

This Proposed Memorandum of Decision is based entirely on the record and sets forth findings of fact, conclusions of law, and a proposed final order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered and vice versa. *SAS Inst., Inc. v. S & H Computer Systems, Inc.*, 605 F.Supp. 816 (Md. Tenn. 1985).

Allegations

1. In ¶1 of the Charges, the Department alleges that respondent has been licensed as an emergency medical technician-paramedic, holding license number 000668 since October 1, 1997.

¹ All section references are to the Connecticut General Statutes unless otherwise stated.

2. In ¶2 of the Charges, the Department alleges that commencing on December 10, 1993, respondent was certified as an emergency medical technician-paramedic, holding certificate number 94-39.
3. In ¶3 of the Charges, the Department alleges that since at least December of 1996, respondent has been employed as an emergency medical technician-paramedic for Norwalk Emergency Medical Services in Norwalk, Connecticut.
4. In ¶4 of the Charges, the Department alleges that on or about December 6, 1996, respondent treated J.M., the victim of an automobile accident.
5. In ¶5 of the Charges, the Department alleges that, during J.M.'s treatment, respondent failed to (a) immobilize his cervical spine; (b) detect and treat a head laceration; and/or, (c) contact medical control regarding treatment.
6. In ¶6 of the Charges, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to §20-206nn(1) and/or (5).

Findings of Fact

1. Commencing on December 10, 1993, respondent was certified as an emergency medical technician-paramedic, holding certificate number 94-39. Respondent has been licensed as an emergency medical technician-paramedic, holding license number 000668, since October 1, 1997. Tr. pp. 27-28; H.O. Exh. 6.
2. Since at least December of 1996, respondent has been employed as an emergency medical technician-paramedic for Norwalk Emergency Medical Services in Norwalk, Connecticut. Tr. pp. 27-28; H.O. Exh. 6.
3. On December 6, 1996, in the early morning, J.M., an adult male, was walking from a bar to a friend's house. While he was walking down the street, a taxicab stopped at a blinking red light and then proceeded through the intersection, striking a Honda that was also proceeding through the intersection and J.M. There is insufficient evidence to establish that the taxicab was traveling in excess of 20 miles per hour when it struck J.M. Tr. pp. 33, 37, 54, 157, 179-180; Jt. Exh. 8, pp. 13, 21; Jt. Exh. 12.
4. On December 6, 1996, at all relevant times, the visibility was poor: it was raining and the area was poorly lit. Tr. pp. 58, 182-83.

5. J.M. was momentarily knocked unconscious. When he awoke, he tried to get up, but his leg was hurting, so he pushed himself back to the curb, sat there, and waited for help. Tr. p. 33.
6. The term "triage" refers to a process whereby priorities for medical treatment are assessed when there are multiple injuries. The patients are assessed to determine which patients need the most rapid intervention, treatment and transportation. Tr. p. 126.
7. To "board and collar" a patient means to place the patient on a hard, long board and immobilize the patient's neck by placing it in a collar. Tr. p. 39.
8. A "primary survey" is a standard survey requiring an assessment of the airway, breathing, circulation, disability and exposure. As part of this assessment, the patient should be checked for spinal injuries, and the cervical spine should be immobilized by holding the head steady until a collar can be placed on the patient. Tr. pp. 101-02, 135-36; Jt. Exh. 10.
9. A "secondary survey" consists of a head to toe survey, beginning with the patient's head. In conducting a secondary survey, the paramedic palpates and inspects the patient from head to toe for injuries or indications of injuries. During a secondary survey, the patient is boarded and collared, if necessary, and is questioned regarding medical history and conditions. Tr. pp. 102-04, 112, 134; Jt. Exh. 11.
10. At 1:37 a.m., a paramedic team consisting of respondent and Mr. Vasquez arrived. On December 6, 1996, Mr. Vasquez was also licensed as a paramedic.
11. Respondent reached J.M. first, and triaged the situation by asking J.M. if he was okay, taking his pulse, and looking briefly at his leg. J.M. told respondent his leg hurt and that he takes heart medication for idiopathic hypsubaortic stenosis ("IHSS") which respondent knew can result in sudden cardiac arrest. Mr. Vasquez, then arrived at J.M.'s side and stayed with J.M. to provide care; respondent left J.M. to triage the other injuries. There were three other persons involved in the accident: one occupant of the taxicab and two occupants of the Honda. Tr. pp. 33-35, 50-51, 157-58, 184; Jt. Exh. 8, p. 9.
12. Mr. Vasquez was the treating paramedic for J.M. and provided all of the care for J.M. until he was *en route* to the hospital. Tr. pp. 35-38, 159; Rt. Exh. 3.
13. The occupant of the taxicab told respondent that he was not hurt and did not want to go to the hospital; both occupants of the Honda reported to respondent that they had neck pain. Respondent then became the treating paramedic for these two patients. Tr. p. 158.

14. Respondent conducted surveys on his two patients, and then went to the ambulance to get collars for them while two police officers held their heads steady. While respondent was getting the collars, Mr. Vasquez yelled to him to bring a stretcher and splint for J.M.'s leg. Tr. pp. 158 and 178.
15. After boarding and collaring his two patients from the Honda, respondent returned to the ambulance to get a splint and stretcher for J.M. which he delivered to Mr. Vasquez. Respondent then returned to the ambulance to call for mutual aid while Mr. Vasquez was splinting J.M.'s leg, and then sat him up on the stretcher. Tr. pp. 35-38, 159.
16. After calling for mutual aid, respondent assisted Mr. Vasquez in placing J.M. in the back of the ambulance. Mr. Vasquez then stayed with J.M. while respondent returned to the patients from the Honda. Tr. pp. 159-60.
17. Respondent and an officer then placed one of the patients from the Honda in the ambulance with J.M. Mr. Vasquez remained in the ambulance with J.M. and the patient from the Honda while respondent returned to his other patient and waited for mutual aid to arrive. Tr. p. 160.
18. When mutual aid from Westport arrived, respondent placed his other patient in the Westport ambulance. Respondent then returned to his ambulance where Mr. Vasquez told him he had conducted a secondary survey on J.M., and updated him on J.M.'s condition. Respondent then rode in the back of the ambulance with J.M. and the patient from the Honda *en route* to the hospital. Tr. pp. 160-61, 163, 168, 169, 182.
19. The Westport ambulance transported its patient to Norwalk; respondent and Mr. Vasquez also transported their two patients to Norwalk. Tr. pp. 161.
20. The paramedics were on the scene for a total of 29 minutes. Jt. Exh. 8, p. 22.
21. The standard of care requires that patients be continually reassessed during transport. Tr. pp. 128-130.
22. During the six minutes required to transport the two patients to Norwalk Hospital, respondent monitored his patient from the Honda, and checked J.M.'s distal pulse, took his blood pressure, and discussed a mutual acquaintance with J.M. Tr. pp. 47, 170.
23. J.M. requested, on multiple occasions, to be taken to Stamford Hospital where he was employed and where his family physician and orthopedic surgeon had privileges. Tr. pp. 35-36.

24. On December 6, 1996, Bridgeport Hospital and Yale-New Haven Hospital were designated as Level I trauma centers; Stamford Hospital was designated as a Level II Trauma Center; and, Norwalk was not designated as a trauma center. Tr. pp. 36, 86-88, 93; Jt. Exh. 7
25. The distance from the accident location to Bridgeport Hospital is 17.3 miles and requires 24 minutes of travel time; the distance from the accident location to Yale New Haven Hospital is 34.3 miles and requires 45 minutes of travel time. Jt. Exh. 4.
26. No evidence was introduced to establish the mileage from the accident location to Stamford Hospital.
27. The travel time between the accident location and Norwalk Hospital is approximately four minutes in good weather and was, on the night of December 6, 1996, six minutes in bad weather. Tr. p. 75, 165, 169.
28. There is insufficient evidence to establish that the travel time between the scene of the accident and Stamford Hospital in the early morning hours of December 6, 1996, was less than 20 minutes, given the weather conditions. Tr. pp. 74, 165 and 169.
29. Medical direction may be either "online" or "offline." Online medical direction consists of having medical direction online by means of either a radio or cell phone. Information regarding the patient's condition is transmitted to a physician who, in concert with the paramedic, makes a decision as to where the patient should be taken. Offline medical direction consists of protocols for treating patients. Such protocols consist of directives from the hospital that permit paramedics to treat patients up to a given point before they are required to go online with a physician. Tr. pp. 141-42.
30. Each hospital determines its protocol for offline medical direction and the point at which a paramedic will be required to go online. Tr. p. 142.
31. Norwalk Hospital has a policy of offline medical direction. This policy requires that when a Level I or II trauma center is more than twenty minutes from the accident, patients who otherwise would be required by statute to be transported to a Level I or II trauma center shall, instead, be transported to Norwalk Hospital without the need for online medical direction. This protocol is consistent with statutory requirements. Rt. Exh. 2; Tr. p. 165.
32. J.M.'s fractured tibia and fibula required that he be transported to a Level I or II trauma center unless such a center was more than twenty minutes' travel time away, in which case, Norwalk Hospital's protocol required that he be taken to Norwalk Hospital.

33. Because respondent determined that Stamford Hospital was more than twenty minutes' travel time away from the location of the accident, he complied with Norwalk Hospital's protocol and transported the patients to Norwalk Hospital. Rt. Exh. 2.
34. J.M.'s IHSS condition required that respondent determine the destination hospital in accordance with medical direction.
35. There is insufficient evidence in the record to establish that respondent did not determine the destination hospital in accordance with medical direction.
36. The standard of care required that Mr. Vasquez: (1) perform a primary and secondary survey on J.M.; (2) board and collar J.M.; and, (3) detect and treat J.M.'s head laceration. Jt. Exh. 8, pp. 7, 7a, 8; Tr. pp. 62-63, 109-11, 121-22.
37. The standard of care did not require that respondent (1) perform a secondary survey on J.M., (2) board and collar J.M., or (3) detect and treat J.M.'s head laceration; nor did respondent perform any of these procedures.
38. Respondent reasonably relied on Mr. Vasquez to conduct a primary and secondary survey and to determine and provide the appropriate care for J.M.
39. The blood from respondent's head wound ran approximately six inches down the front of J.M.'s sweat shirt, and onto the collar and inside of respondent's black ski jacket. However, it was not possible for respondent to discern the blood on J.M.'s head or jacket when he was outside in the dark and rain with J.M., or when he rode with J.M. in the ambulance since (1) J.M.'s hair is very dark, (2) the ski jacket was black, and (3) both J.M.'s hair and the jacket were soaking wet from both the rain and blood. Tr. pp. 61, 63-64, 181-82.

Discussion and Conclusions of Law

Pursuant to §20-206nn, the Commissioner may take any disciplinary action set forth in section 19a-17 against a paramedic license if the licensee fails to conform to the accepted standards of the profession or engages in negligent, incompetent or wrongful conduct in performing his professional activities. In this case, the Department alleges that respondent failed to conform to the standard of care and engaged in negligent, incompetent or wrongful conduct in providing care for J.M. when he failed to: (1) immobilize J.M.'s cervical spine; (2) detect and treat a head laceration on J.M.; and/or, (3) contact medical control regarding J.M.'s treatment.

Based on these allegations, the Department argues that respondent's license should be subject to disciplinary action.

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Swiller v. Comm'r of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981). As discussed herein, the Department did not sustain its burden of proof as to any of its claims, and this matter should be dismissed in its entirety.

While there is no doubt that respondent did not immobilize J.M.'s cervical spine, or detect and treat J.M.'s head laceration, a preponderance of the evidence also establishes that respondent was not the paramedic responsible for treating J.M.; Mr. Vasquez provided care to J.M. Therefore, it was Mr. Vasquez' responsibility, *not respondent's*, to immobilize J.M.'s cervical spine and detect and treat his head laceration.

In presenting its case in chief, the Department made no mention of the fact that multiple injuries had occurred. Thus, the experts' opinions set in the context of the facts in evidence at the time, were not, in all instances, relevant to the facts of the case as later established by undisputed evidence. For example, in his defense, respondent submitted credible testimony that he was triaging the situation when he first conferred with J.M. He credibly testified that he questioned and checked J.M. just enough to determine that his life was not in imminent danger, and then proceeded to check on others who were injured. Thus, while Mr. Vasquez assumed responsibility for J.M.'s care, respondent assumed responsibility for the care of the two other patients whom he properly boarded and collared.

The expert opinions established that paramedics providing care to patients should conduct primary and secondary surveys, and that if such surveys had been performed on J.M., the head laceration would have been detected. However, the experts shed no light on whether respondent acted properly in a situation in which he was triaging multiple injuries.

The Department also argued that respondent should have detected the head laceration while *en route* to the hospital either by conducting a secondary survey or by observing blood on the stretcher, or on J.M.'s hair and jacket. As an initial matter, there was no evidence

establishing that the standard of care requires that respondent conduct a secondary survey after another paramedic has already conducted such a survey. Secondly, there was no evidence to establish that there was blood on the stretcher. To the contrary, the evidence establishes that J.M.'s head did not even touch the stretcher. Tr. pp. 181-82. Finally, with regard to the Department's claim that respondent should have seen the blood on J.M.'s hair and jacket, a preponderance of the evidence establishes that it was pouring down rain at the time, and that J.M. not only had very dark hair, but that his jacket was black. Because a soaking wet, black jacket and dark hair would appear dark and wet, but not necessarily red with blood, it is reasonable that respondent did not see the blood from the laceration.

The Department also claims that respondent should have "contact[ed] medical control regarding treatment." ¶5c of the Charges. The Department's attorney clarified this claim during the hearing, stating that the Department's concern was that respondent should have sought *online* direction² regarding the destination hospital, and that the decision as to the destination hospital is part of "treatment." Tr. p. 116-19. Assuming this to be the case, there is insufficient evidence to establish that respondent was required to establish *online* contact with a physician to determine the destination hospital.

In this case, the Department claims that respondent was required to seek online medical direction since (1) J.M. had a fractured tibia and fibula; (2) J.M. was hit by a car going in excess of twenty miles per hour; and, (3) J.M. had a known cardiac disease. The evidence is sufficient to establish that J.M. had two long bone fractures and a known cardiac disease, but the evidence is insufficient to establish that J.M. was hit by a car traveling in excess of 20 miles per hour.³

² Specifically, the Department claims that respondent should have "called medical control for medical direction." Tr. p. 117. Since the relevant regulation, §19a-177-5(a) only references the requirement to seek "medical direction," and does not reference "medical control," this discussion will assume that the Department's claim is that respondent failed to seek medical direction. (Regulation §19a-179-1(o) and (p), defines "medical control" and "medical direction," respectively. Although this section is not cited as being applicable to §19a-177-5 of the Regulations, §19a-179-1, nevertheless, defines terms commonly used in the industry.)

³ Even if this assertion had been established by the evidence, it would not change the outcome in this matter since the determination of the destination hospital for a patient struck by a vehicle traveling in excess of twenty miles per hour is made in the same manner as for patients with cardiac diseases. See, Regulation §19a-177-5(a)(3).

Thus, the only issue is whether the existence of either of the two proven conditions required that respondent seek *online* medical direction.

Section 19a-177-5(a)(5) provides that patients who have “[t]wo or more obvious proximal long bone fractures” shall be taken to a Level I or Level II trauma facility. Since J.M.’s fractured tibia and fibula constitute “[t]wo or more obvious proximal long bone fractures,” this regulation required that respondent transport J.M. to a Level I or Level II trauma facility. This regulation did *not*, however, give rise to any requirement that respondent establish online contact with a physician.

The issue of whether respondent should have sought online medical direction appears to arise pursuant to subdivision (a)(5) of the same section which provides that “[w]hen transport to a Level I or II trauma facility is indicated but the ground transport time to that hospital is judged to be greater than twenty (20) minutes, determination of destination hospital shall be in accordance with local medical direction.” Presumably, it is the Department’s contention that because the transport time to Stamford Hospital was greater than twenty minutes,⁴ respondent was required to seek online medical direction.

This contention, however, is not supported by a preponderance of the evidence. The evidence establishes that “medical direction,” by Norwalk Hospital policy, consists of an offline protocol that requires paramedics to transport such patients to Norwalk Hospital -- which is exactly what respondent did. Thus, respondent acted entirely in accordance with the Regulation, Norwalk Hospital’s policy, and Norwalk Hospital’s offline protocol.⁵

Finally, the Department contends that respondent should have sought online medical direction due to J.M.’s heart condition. Section 19a-177-5(a)(3) of the Regulations requires that when the patient has a known heart disease, the “determination of destination hospital shall be in

⁴ Apparently, the Department does not dispute respondent’s claim that the travel time between the location of the accident and Stamford Hospital was greater than twenty minutes since (1) it did not produce any evidence or make any argument contradicting respondent’s claim; and, (2) the issue of seeking medical direction does not arise unless the Level I or II facility requires more than twenty minutes of transport time.

⁵ Section 19a-177-6 of the Regulations requires that if a patient who meets the criteria for delivery to a Level I or II trauma facility is taken to a facility that is not so designated, the patient shall then be transferred to a Level I or II facility. Consistent with this Regulation, after receiving treatment at Norwalk Hospital, J.M. was subsequently transferred to Stamford Hospital, a Level II trauma facility.


accordance with medical direction." Since, as previously discussed, medical direction may be either "online" or "offline," the Department had the burden of proof to establish that Norwalk Hospital either had no protocol so that respondent was required to establish *online* contact with a physician under such circumstances, or that an existing protocol required online contact. Since the Department failed to produce any such evidence, it failed to sustain its burden of proof.⁶


In sum, the Department failed to establish by a preponderance of the evidence that respondent engaged in any conduct that was negligent, incompetent or wrongful. To the contrary, in 29 minutes, he competently and quickly triaged a situation involving four potential patients, called for mutual aid, provided Mr. Vasquez with the equipment he requested, and boarded and collared two other patients.⁷ In the next six minutes, he monitored the two patients *en route* to the hospital, and delivered them to Norwalk Hospital in accordance with the hospital protocol.

Proposed Order

Based on the record in this case, the above findings of fact and conclusions of law, this Hearing Officer respectfully recommends to the Commissioner that he dismiss this action pending against the paramedic license of George Marcinko, license number 000668, Petition No. 981223-072.

Respectfully Submitted,


Donna Brewer, Hearing Officer
Department of Public Health


Date

⁶ Furthermore, since J.M.'s fractured tibia and fibula required transportation to a Level I or II facility, that regulatory requirement may well have superceded the requirement that respondent seek medical direction for J.M.'s cardiac condition, since the fractured bones required a higher level of care. No evidence was submitted to establish the destination hospital when one patient has two separate conditions.

⁷ Indeed, respondent's competent care of the two patients from the Honda establishes his skill and knowledge, and lends credence to his claim that he acted properly at all times.